

(C) Ex Order
LPH (10450)

4 November 1944

OGC Has Reviewed

MEMORANDUM FOR: Deputy Director (Administration)

SUBJECT : National Security Council Report on a Uniform Clearance Program for Individuals other than Full-Time Federal Employees Who Require Access to U.S. Classified Information

1. We have attempted to review carefully subject report in the time available. In general I concur with Colonel Edwards' comments. However, I believe that additional legal strength can be added to a portion of his position.
2. With respect to the provisions of Executive Order 10450 regarding the maintenance by the Civil Service Commission of a central security investigations index, this Agency previously advised the Civil Service Commission that the Agency could not comply with these provisions. The basis for the Agency action was the responsibility of the Director under Section 102(c) of the National Security Act and Section 7 of the CIA Act of 1949 which specifically exempt the Agency from all provisions of law requiring publication or disclosure of personnel data.
3. The report itself concludes on page 15 that "Criteria being applied to contractor employees are in substance the same as those applied to government employees." The report further concludes on page 17 that "It is inadvisable to set up an overall government appeal board to handle personnel security clearance matters." This conclusion is stated to be based on the principle of sound administration that agency decision should not be divorced from agency responsibility. In view of the fact that this report may be the basis for government-wide action, I believe it necessary to comment that an employee of a contractor stands in quite a different position than a government employee.
4. Recognizing the widespread distribution of classified contracts in private industry, a denial of access to classified information to an individual in certain cases could substantially deny him the right to earn a living in his chosen field of work. Therefore, under American concepts of justice that right should only be disturbed after careful review and a fair hearing. An appeals board outside of the agency concerned under these circumstances is clearly, in my opinion, not a

divorcement of agency decision from agency responsibility. There may be other valid reasons for not establishing such an appeals board, but the reason asserted does not seem to stand up under examination.

5. With respect to recommendations in the report numbered 3 relating to consultation between agencies where there are conflicting security evaluations and recommendation number 5 relating to establishing formal procedures for hearings where contractors' and employees' access to classified information has been denied, we agree with Colonel Edwards that these recommendations are basically sound, but would require modification in so far as CIA's particular needs are concerned. Possibly this could be handled by careful and appropriate wording in whatever executive order would result from this NSC report.

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Acting General Counsel

OGC/JSW:mm

2 - addressee

1 - OGC subject

1 - OGC chrono

Security 2 - C.R. Security 2 - EO 10430